

Book Review

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Recommended Citation

(1972) "Book Review," *Cornell International Law Journal*: Vol. 5: Iss. 2, Article 6.
Available at: <http://scholarship.law.cornell.edu/cilj/vol5/iss2/6>

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BOOK REVIEW

Asian Contract Law. DAVID E. ALLAN (Gen. ed). Carlton: Melbourne University Press. 1969. Pp. xiii, 287. \$9.60.

The traditional local law of Asia is spectacular in its contrast to European legal concepts. The customary *Adat* law, for example, which is the law for the majority of the indigenous population of Indonesia, does not differentiate between real and personal property, *in rem* or *in personam* rights, or civil and criminal wrongs.

The book *Asian Contract Law* is an enlightening comparative survey of the problems being encountered by eleven Asian countries in their attempt to reconcile native laws and attitudes with European legal concepts to meet modern needs. Written by a team of eleven authors from the countries surveyed — Australia, India, Iran, Indonesia, Japan, Korea, Malaysia, New Zealand, the Philippines, Singapore, and Thailand — under the direction of the Law Association for Asia and the Western Pacific, this concise book is intended as a prelude to more specialized research, and it contains an excellent bibliography, index, and table of cases which will be of great assistance if further research is ever in fact attempted.

The book is divided into three sections. Chapters one through four are a survey of the history and current state of contract law in the common and civil law countries, as well as the *Adat* law. Chapters five through seven consist of a general discussion of the formal and customary laws affecting trade and commerce. Chapters eight through fourteen are an analysis of the particular needs of each of these countries. These needs include the areas of standard form contracts, exemption clauses, restrictive trade practices, credit problems, land tenure and carriage of goods.

Asian Contract Law is a scholarly work of orthodox comparative law, but it has more going for it than that. It is interesting, and it delves into areas not generally examined. For example, it is not widely known that Japan adopted European codes primarily to exhibit to the Western powers that it had reached the stage of civilization at which it had to be accepted as an equal.

The authors of the work employ a writing style which is readable and consistent throughout the book. This appears to be the result of abandoning the original plan of having each contributor write a chapter on his own country's problems and instead integrating these chapters into a more general comparative survey. Although it is claimed that

this change also removed a great deal of repetition, a fair amount remains, particularly in the book's middle section. There are some more fundamental faults, however. The assertion that Asian countries have basically similar problems does not have firm foundations. Culturally, Australia has little in common with Singapore and, geographically, Korea is as far from Iran as Boston is from London. It would be hard, therefore, to understand why those countries would have similar problems. In addition, it is claimed that the fundamental legal problem encountered in the Asian world was and still is "the inadequacy of traditional legal concepts to grapple with the problems of modern sophisticated communities." (p. 84). This may have been true of Japan, but it is more doubtful of Vietnam since the significance of the rules of contract as a force for social or economic change becomes diminished in the case of a society which has been in almost constant turmoil during the modern era.

Some problems of applying European rules to Asian situations are aptly pointed out. For example, it is observed that the decision in *Choo Tiong Hin v. Choo Hock Swee* was unjust because the Singapore Court of Appeal, following the English decision in *Balfour v. Balfour*, dismissed the suit as based on a family arrangement which, however, under Asian law, constituted a business contract. While such problems are mentioned, they are left unresolved. Perhaps an abandonment of the European legal system, forced upon the Asian countries primarily by invasion and colonial suppression, would now be an appropriate solution.

Why is it that the book fails to even mention Communism? The editor claims that the lack of time and English translations prevented the inclusion of a comparison of subjects such as Islamic or Chinese law. An examination of these important alternative systems would have added greatly to this otherwise excellent work.

Ira B. Marcus